

**SAMPLE  
PROJECT AGREEMENT  
REMEDATION AND EMERGENCY SERVICES**

**EXHIBIT 8**

This Project Agreement ("Agreement") is entered into on the date last written below ("Effective Date") by and between the following parties on the project:

**Customer:** The State of Louisiana, its user agencies, boards and commissions, and/or designated representative (hereinafter collectively referred to as "Customer" and/or "the State")

**For this Project:**

**User Agency (State entity with affected property):** \_\_\_\_\_

**User Agency Contacts (person(s) with access to involved property and will assist Contractor):**

\_\_\_\_\_

**If requested services are due to an insurance claim, the State's Designated Representative(s) are:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**CONTRACTOR:** \_\_\_\_\_

**Contract #:** \_\_\_\_\_

**Project Name:** \_\_\_\_\_

**Project Location:** \_\_\_\_\_

**Involved Buildings** – List building, name, ID, and claim number; if multiple buildings use the Multiple Building List

\_\_\_\_\_

IN CONSIDERATION of the mutual promises, covenants, and agreements contained herein and within the awarded Invitation to Bid (ITB) for such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**1. WORK PERFORMED**

CONTRACTOR hereby agrees to furnish all services, labor, materials, equipment and other items reasonably necessary to complete the work described below at the Project ("Work").

- ☐ As provided in attached Scope of Work incorporated herein. Scope of Work is to be determined in the event of a loss and agreed upon by Contractor and Customer.

Contractor shall perform the Work in accordance with (a) the terms and provisions of this Agreement with its attachments and the ITB with its attachments, exhibits and the awarded contract (collectively referenced as "Agreement Documents") (b) best industry standards and practices; and (c) Customer's requirements to maximize the potential for payment of claims and reimbursement of expenses.

Contractor agrees to perform Work within the time set forth in the Critical Path Projection Schedule set forth and attached. However, Customer and Contractor agree that the Critical Path Projection Schedule will not be required for all projects and shall be agreed upon at the time of loss if needed.

Contractor agrees that if a Critical Path Projection Schedule is required all times and deadlines set forth in that attachment are material terms to this Agreement and that, accordingly, time is of the essence. By executing this Agreement, Customer hereby authorizes Contractor to commence Work immediately, unless a different commencement date is provided here:

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## 2. PRICE

Customer shall pay to Contractor in U.S. dollars all amounts due for Work in accordance with the following selected pricing:

- ☐ **Rate Schedules:** All Work performed shall be priced in accordance with the Contractor's Labor, Materials, and Equipment Rate Schedules ("Rate Schedule") and the CAT Fee & Xactimate Discount Schedule (CF-XD Schedule) as submitted under the awarded Initiation to Bid (ITB) and incorporated within the awarded contract. The Rate Schedules and CF-XC Schedule are collectively referred to as "Schedules." Contractor's Rate Schedule prices do not include any maximum or not to exceed limitations on Price unless an addendum is included hereto, attached, and signed by the parties. All pricing based on the Rate Schedules shall be subject to the conditions set forth in Conditions to Rate Schedules Pricing, which is also incorporated herein.
- ☐ **Unit Cost Estimate (Xactimate):** All Work described above shall be priced in accordance with the Contractor's unit cost estimate prepared in Xactimate, a copy of which is set forth in Attachment Xactimate Estimate and is incorporated herein. If applicable, the Xactimate Discount will be applied with the invoice submission.

Notwithstanding the pricing set forth herein, all labor, materials, equipment and subcontracted and vendor services in relation to the completion of this Project must fall within the acceptable parameters of the current industry standard prices and indexes. Unless otherwise provided in this Agreement or agreed by the parties (specifically, agreement from the Office of Risk Management or its designee must be obtained, if an insurance claim is involved), the Price shall not be increased during the term of this Agreement and/or prior to completion of Work.

- 3. Price specified herein does not include any state and/or local sales tax or use taxes on the Work or services performed, unless specifically stated in the Proposal. The State is exempt from all state, local and use taxes.

## 4. INVOICING AND PAYMENT

Unless otherwise agreed in writing by Customer, the Contractor shall submit an invoice for services rendered and/or portions of Work completed as outlined in the Agreement Documents and as stated below:

- A. For Projects priced based on Rate Schedules, invoices shall be submitted at the end of the project unless the project will exceed thirty (30) calendar days. If the project will exceed thirty (30) calendar days, then invoices shall be submitted monthly. The amount invoiced shall include all labor, materials, equipment, and subcontracted services provided during the invoiced time period at the amounts provided in Rate Schedules.
  - B. For Projects priced based on Xactimate, invoices shall be submitted upon completion of all Work.
  - C. All invoices shall be submitted on a form and in such detail as is reasonably requested by Customer or its insurer during the invoiced period (not less than a thirty (30) calendar day period) in accordance with the Agreement Documents. Invoices may be submitted electronically or personal delivery to the State's designated representative. Invoicing with support documents may be mailed to the State's designated representative, but only with prior contact with the representative to obtain permission and confirm delivery address.
    - 1) All invoices involving an insurance claim will be submitted to the claims examiner from the Office of Risk Management's (ORM) Third Party Administrator (TPA) or to ORM's consultant (if applicable).
  - D. Invoicing must allocate billing for services per building with further breakdown to show billing related to contents at a specific building.
  - E. Each invoice shall be in such detail and include information required by Customer including, but not limited to:
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- 1) Contractor's federal and any state tax identification number;
  - 2) Description of the Work completed, and the associated charges covered by the invoice;
  - 3) Any authorized changes or modification to the Work included in the invoice;
  - 4) Identification of subcontractors, equipment suppliers, and materialmen and their charges covered by the invoice;
  - 5) Invoices involving insurance must include the claim number, building name, and building ID number;
  - 6) Executed lien releases and waivers from all subcontractors and Contractor for Work covered, all in a form reasonably acceptable to Customer;
  - 7) As to each invoice submitted, an officer or owner of Contractor shall certify that Contractor has paid all services, supplies, equipment, materials, subcontract services, etc. on the Project as of the date of invoice and all liens, rights of lien and claims against Customer will have been satisfied to date.
- F. Payments on each invoice are due within thirty (30) business days following Customer's actual receipt, less any retainage allowed in this Agreement. Customer agrees to make payment of each invoice to Contractor in the amount and on the terms specified in the Agreement Documents for the Work rendered during the period covered by the invoice, regardless of whether Customer has a right to indemnity, insurance, or any reimbursement for remediation, restoration or construction on the Project.
- 1) If the Project involves an insurance claim, and Contractor has received approval for the Work from the State of Louisiana Office of Risk Management or its designee, payments will be made by the State's Third Party Administrator. However, the involved state entity will be responsible for the amount(s) associated with the deductible or any uninsured/non-covered Work, if applicable.
- G. Customer shall review all invoices and notify Contractor of any exceptions, deficiencies or disputes in the invoice or related documents within twenty-five (25) business days of receipt of invoice. If Customer identified any exceptions, deficiencies or disputes as to the invoice, then Customer shall give Contractor notice, preferably in writing, indicating any basis for the exceptions, deficiencies or dispute, providing reasonable detail in support of such position.
- H. Only disputed amounts where notice has been given as required in this Agreement may be suspended. Contractor agrees not to assert a payment default on any properly disputed amounts, if Customer timely pays all undisputed amounts.
- I. Remediation and emergency services may involve repair Work that is covered by insurance and Work that is not covered by insurance. The user agency (involved state entity) will be responsible for payment of Work that was not covered by insurance along with the agency's deductible, if applicable.
- J. Place of payment shall be at the address of Contractor as set forth on invoice and/or W9. Payments shall be in U.S. Dollars by check written on U.S. bank account with sufficient funds.
- K. Customer may, at its sole option, retain up to ten percent (10%) of any progress or partial invoice until completion of this Project. If Customer receives notice of nonpayment from any subcontractor on the Project, then Customer may additionally withhold payment of the amount claimed by the subcontractor until a properly executed release, waiver or judgment regarding that claim is received by Customer. Customer may, at its sole option, withhold final payment on the Project until all Work is completed, including punch list items, and all lien releases and waivers on the Project are delivered. Customer and Contractor shall also comply with all state or local lien laws applicable to the Project.
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- L. As a condition precedent to final payment under this Agreement, Contractor and each subcontractor shall release and discharge Customer from all liabilities, obligations and claims arising out of or under this Agreement.
- M. Payment by Customer shall not prejudice Customer's right to audit Contractor's records with regard to the Project as allowed by the Agreement Documents or to seek compensation for any overpayment or any other damages arising from the Project. In the event payment has been made by Customer in excess of the amount determined as being the entitlement of Contractor under the provisions of this Agreement, Contractor shall repay such excess amounts within thirty (30) business days of request or dispute payment as provided herein.

## **4. INSURANCE REQUIREMENTS FOR CONTRACTOR**

The Contractor shall purchase and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors. Refer to the Terms and Conditions of the awarded ITB for specific insurance requirements that are mandated throughout the term of the contract.

## **5. INDEMNIFICATION / HOLD HARMLESS**

- A. Contractor agrees to protect, defend, indemnify, save, and hold harmless the State of Louisiana, its agencies, its boards and commissions, officers, agents, employees, servants, and volunteers from and against any and all claims, damages, expenses, and liability arising out of injury or death to any person or the damage, loss or destruction of any property which may occur, or in any way grow out of, any act or omission of Contractor, its agents, servants, and employees, or any and all costs, expenses and/or attorney fees incurred by Contractor as a result of any claims, demands, suits or causes of action, except those claims, demands, suits, or causes of action arising out of the negligence of the State of Louisiana, all State Departments, Agencies, Boards, Commissions, its officers, agents, servants, employees and volunteers.
- B. Contractor agrees to investigate, handle, respond to, provide defense for and defend any such claims, demands, suits, or causes of action at its sole expense and agrees to bear all other costs and expenses related thereto, even if the claims, demands, suits, or causes of action are groundless, false or fraudulent. The State of Louisiana may, but is not required to, consult with the Contractor in the defense of claims, but this shall not affect the Contractor's responsibility for the proper handling of and expenses for all claims.

## **6. COMPLIANCE WITH LAWS AND PROCEDURES**

- A. Contractor and Customer agree to observe and comply with all applicable laws, regulations, ordinances, orders, executive orders and directives (collectively, "Applicable Laws") of any governmental authority, federal, state, local or foreign, where appropriate, including without limitation FEMA, EPA, LDH, DEQ, and OSHA, and shall be in compliance with all applicable registration, license, and permit requirements at all times. Failure to comply with Applicable Laws shall be grounds for termination of this Agreement.
  - B. Contractor agrees, in connection with the performance of its obligations under this Agreement, not to discriminate against any applicant or employee based on race, color, religion, sex, age, national origin, disability, status as a covered veteran, or any other protected class status and to refer individuals to Customer on a nondiscriminatory basis, regardless of their protected class status. Contractor must comply with and abide by the applicable requirements of Title VI and Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972, Federal
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Executive Order 11246, Federal Rehabilitation Act of 1973, as amended, The Vietnam Era Veteran's Readjustment Assistance Act of 1974, Title IX of the Education Amendments of 1972, The Age Discrimination Act of 1975, and by the Americans with Disabilities Act of 1990. Failure to comply with these statutory obligations shall be grounds for termination of this Agreement.

- C. Contractor certifies that it will comply with its obligations under the Immigration Reform and Control Act, the Fair Labor Standards Act and all other applicable federal, state and local laws and regulations in connection with Contractor's subcontractors and personnel assigned to Customer. Failure to comply with these statutory obligations shall be grounds for termination of this Agreement.

**Items D. through G. include reporting requirements for FEMA eligibility on Projects involving a Catastrophe Event as required by FEMA**

D. Compliance with the Copeland "Anti-Kickback" Act

- 1) Contractor. The contractor shall comply with 18 USC § 874, 40 USC § 3145, and the requirements of 29 CFR pt. 3 as may be applicable, which are incorporated by reference into this Agreement.
- 2) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all these contract clauses.
- 3) Breach. A breach of the Agreement clauses above may be grounds for termination of the Agreement, and for debarment as a contractor and subcontractor as provided in 29 CFR § 5.12.

E. Compliance with Clean Air Act, 42 USC § 7401-7671q (Agreements in excess of \$150,000)

- 1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 USC §7401 et seq.
- 2) The contractor agrees to report each violation to the State of Louisiana Office of Risk Management and understands and agrees that the State will, in turn, report each violation as required to assure notification to the recipient (Governor's Office of Homeland Security and Emergency Preparedness), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- 3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

F. Federal Water Pollution Act

- 1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC §1251 et seq.
  - 2) The contractor agrees to report each violation to the State of Louisiana Office of Risk Management and understands and agrees that the State will, in turn, report each violation as required to assure notification to the recipient (Governor's Office of Homeland Security and Emergency Preparedness), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
  - 3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.
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## **G. Byrd Anti-Lobbying Amendment**

- 1) Contractors that apply or bid for an award of \$100,000 or more must file the required certification. See 2 C.F.R. Part 200, Appendix II, ¶ J; 44 C.F.R. Part 18; Chapter IV, ¶ 6.c; Appendix C, ¶ 4.
  - 2) Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award. See Chapter IV, ¶ 6.c and Appendix C, ¶ 4.
  - 3) Applicability. This requirement applies to all FEMA financial assistance programs where contractors apply or bid for an award of \$100,000 or more.
    - a. The State must receive a lobbying certification and, if applicable, a lobbying disclosure from the Contractor if the Project will exceed \$100,000.
  - 4) Certification of no federal suspension or debarment
    - a. By signing the Agreement for a Project of \$25,000 or more, the Contractor certifies that their company, and subcontractors, or principals are not suspended or debarred by the General Services Administration (GSA) in accordance with the requirements in "Audit Requirements in Subpart F of the Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" (Formerly OMB Circular A-133).
  - 5) The Contractor shall not use DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.
  - 6) This is an acknowledgement that FEMA financial assistance will be used to fund the Project only. The Contractor will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.
  - 7) The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the non-Federal entity, Contractor, or any other party pertaining to any matter resulting from the Agreement.
  - 8) The Contractor acknowledges that 31 USC Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Agreement.
- H. If notified, Contractor shall at all times reasonably attempt to have its employees, officers, agents and subcontractors comply with applicable rules, policies and procedures promulgated by the State regarding personnel, building and/or workplace practices at the Project, including, but not limited to Drug and Alcohol and Firearms. Customer shall provide Contractor with copies of all applicable rules, policies, and procedures promulgated. If any of these procedures and policies adversely affect the timely performance of Work or the Scope of Work and were not provided prior to execution of this Agreement, then a modification of the Project's Scope of Work may be needed. If a revised Scope of Work / Change Order is needed, a subsequent agreement and approval between the Contractor and the Customer will be required to approve the revision/change order. Failure to comply with these rules, policies, and procedures shall be grounds for termination of this Agreement.
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## **7. CHANGES AND MODIFICATIONS**

Customer may at any time, in writing, make changes within the Work as specified in this Agreement. If any such change causes an increase or decrease in the cost of, or the time required for the performance of, any service under the Work, whether changed or not changed, an equitable adjustment shall be made in the Price and/or delivery schedule. Work and/or Price shall be modified, in writing, accordingly. Contractor shall notify Customer within ten (10) calendar days of receipt of such change or modification of any adjustment in Price. Any change in this Agreement shall be made pursuant to this Agreement. Customer shall notify Contractor whether or not to proceed with such change.

## **8. INDEPENDENT CONTRACTOR**

The status of Contractor and its employees and subcontractors to Customer shall be that of an independent contractor and not any other relationship including partner, agent or employee. Neither Contractor nor its subcontractors shall make any representation to the contrary to any person. Contractor shall not bind, or attempt to bind Customer to any obligation with any third party. In all of its activities under this Agreement, Contractor shall act consistently with its status as an independent contractor. None of Contractor's employees, agents or subcontractors shall be deemed employees of Customer. Customer does not and will not have actual, potential or any other control over Contractor, its employees or agents, except as otherwise expressly set forth in this Agreement. Persons furnished by Contractor under this Agreement shall not be entitled to any benefits that Customer provides its own employees.

## **9. ASSIGNMENT AND SUBCONTRACTING**

This Agreement nor any portion of the Work shall be assigned without the prior written consent of the State, in and at the State's sole discretion. Contractor further agrees not to subcontract any portion of the Work to be performed hereunder without consent of the Customer, which shall not be unreasonably withheld. Contractor shall remain fully liable and responsible for performance of the Work and Agreement, including the conduct of such subcontractor. All services hereunder shall be performed by persons who are experienced and highly skilled in their professions and in accordance with the highest standards of workmanship in their profession. Any attempt to transfer, subcontract, delegate or assign Contractor's duties or responsibilities hereunder without having first obtained such approval shall be null and void.

## **10. WARRANTIES AND CORRECTION OF WORK**

- A. Warranties – Contractor shall provide all services with a high degree of care, skill, diligence, professional knowledge, judgment, and expertise, according to sound work practices and accepted professional and industry standards, in a well-managed, organized, and efficient manner and to the entire satisfaction of the Customer. Contractor warrants and represents that all products and services provided or installed by the Contractor shall: (i) be of high quality; (ii) free from any defects; (iii) suitable for the purposes for which it was intended; (iv) performed in a good and workman-like manner; (v) comply with all applicable laws, regulations, standards, and codes; (vi) not violate any patent, copyright, trade secret, or other proprietary interests; and (vii) otherwise fully conform in all respects to the description or Statement of Work and this Agreement.
  - B. Deficient Work – All Work furnished under this Agreement is subject to inspection, clearance testing, and/or other review as determined by Customer, Insurer or Customer's agent. If, in the opinion of the Customer, any of the Work is unreasonably delayed, executed carelessly or negligently, or in noncompliance with the requirements of all Applicable Laws, FEMA or Insurer's requirements, or this Agreement, then Customer may notify Contractor in writing of such deficiencies or non-conforming Work. Contractor shall promptly correct or re-perform nonconforming services at the Customer's request at no additional charge. If Contractor fails to correct or submit a corrective plan of action within five (5) calendar days from the delivery of notice and correct the deficiencies noted to the satisfaction of the Customer within a reasonable time, then
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Contractor shall be in default of this Agreement, and Contractor shall, upon demand of the Customer, discontinue the Work in accordance with Customer's written instructions, and Customer shall be relieved of all responsibility to pay for non-conforming Work.

- C. Contractor shall supervise and direct the Work, using its skill and attention, and be solely responsible for all cleaning and restoration means, methods, techniques, sequences and procedures utilized, as well as for coordinating all portions of the Work under this Agreement, except as otherwise directed by Customer, or a properly designated third party representative.
- D. Contractor at all times shall keep the property free from accumulation of waste materials or rubbish caused by its operations. At the completion of its Work, Contractor shall remove all of its waste materials and rubbish from and about the Project site as well as its tools, construction equipment, machinery and surplus materials.

## **11. SAFETY AND SECURITY**

- A. Contractor shall (i) be responsible for initiating, maintaining and supervising all safety precautions and programs; (ii) provide to its employees, subcontractors, and materialmen any and all safety equipment necessary for performing the Work and shall cause its employees, subcontractors, and materialmen to use such safety equipment, procedures and protocol required by all local, state, and federal laws and best industry standards and practices; (iii) see that all goods, services and Work at the Project shall be performed in compliance with all federal, state and local occupational safety and health, environmental, hazard communication and right-to-know laws and regulations as currently in effect and as may hereafter be amended.
- B. Contractor and its employees, agents and subcontractors shall work in harmony with all other trades, employees, and contractors engaged in any work on the Project. Contractor shall take all necessary precautions to prevent the occurrence of any injury to persons or damage to property during the progress of such work, assumes all liability associated with the condition of the premises, including negligence of Customer except to the extent that any such injury or damage is due solely and directly to Customer's gross negligence or willful misconduct.
- C. Where required by Customer, Contractor agrees to conduct background screening in compliance with Customer's security standards on Contractor's and/or its subcontractor's employees working on Customer's premises. Customer will provide its security standards to Contractor on request. Customer reserves the right to review Contractor's employee screening program. Where deemed appropriate, and at Customer's sole discretion, Contractor's employees will carry/display Customer's identification credentials and be fingerprinted.
- D. Contractor shall be responsible for the performance and behavior of its personnel and subcontractor's personnel while they are performing services under the Agreement. Customer shall have the right to object to any person performing services under the Agreement and upon notice of such objection, Contractor shall immediately remove any such person and replace him/her. Customer shall not unreasonably exercise such right.
- E. All personnel shall carry out their work and necessary contacts with Customer and its employees and customers so as not to unreasonably disrupt Customer's normal operation.

## **12. DEFAULTS AND TERMINATION**

- A. Termination Without Cause
    - 1) Without prejudice to any other rights or remedies, Customer may immediately terminate all or any part of the Agreement for its convenience upon written notice to Contractor, in which case
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Contractor shall be paid the percentage of the Price reflecting the percentage of equipment, materials or services provided or performed prior to notice of termination, plus costs resulting from Customer's termination, less the disposal or retention value of any termination inventory. The forgoing amounts may include a reasonable sum consistent with the rate schedule as set forth in the Labor Rate Schedule, Material Rate Schedule, and Equipment Rate Schedule for any equipment, materials or services provided by Contractor in termination of Work. In the event of such termination, Contractor shall immediately stop all work hereunder and shall immediately cause any of its suppliers or subcontractors to cease work or deliveries. Customer shall not be liable or obligated in any way for equipment, materials or services provided or performed after receipt of notice of termination or for any costs incurred by Contractor's suppliers or subcontractors which Contractor could have avoided, except for necessary demobilization costs.

- 2) Any claims arising from termination by Contractor under this section must be made in writing within thirty (30) calendar days after the effective date of the termination notice, and Contractor shall provide Customer detailed documentation for such claims within said thirty (30) calendar days

## **B. Termination for Cause**

- 1) In the event Contractor (i) becomes bankrupt or otherwise insolvent, (ii) commences or becomes the object of any proceeding involving Contractor's insolvency, bankruptcy, reorganization, dissolution, liquidation, or any similar proceeding for the relief of financially distressed debtors, or (iii) fails in any material way to perform any of the obligations under this Agreement, or so fails to make progress as to endanger such performance and does not cure such failure within ten (10) calendar days of written notification by Customer, then Customer may, at its sole election, by notice to Contractor, terminate this Agreement.
- 2) If terminated for cause, Contractor shall not be entitled to payment of any additional amounts due to termination. The rights and remedies of Customer in this clause are in addition to any other rights and remedies provided by law under this Agreement or otherwise.

## **13. FORCE MAJEURE**

Contractor shall not be liable for delays in the completion of the Project resulting from any circumstances beyond Contractor's reasonable control not occasioned by Customer's fault or negligence or due to compliance with any sovereign decrees, orders, acts, instructions or priority requests of any federal, state, or municipal government or any department or agency thereof, civil or military, acts of god, acts or failure to act by Customer, strikes, lockouts, embargos or wars. Upon the happening of any circumstances or causes aforesaid, Contractor shall notify Customer without delay and any relief granted to Contractor shall be limited to an extension of time to complete the Project to the extent the circumstance or cause delays the progress of the Project.

## **14. CONTRACTOR'S QUALIFICATIONS**

- A. Contractor is a reputable firm regularly engaged in providing remediation services with the experience, knowledge, abilities, skills, and resources necessary to complete Work. Contractor has and shall maintain in good standing all required governmental permits, licenses, registrations, certifications, and approvals necessary to provide the Work.
  - B. Contractor will at all times maintain an adequate staff of experienced and qualified employees to ensure the efficient performance of the Work and its other obligations under Agreement. Each phase of work performed by the Contractor shall be under the direction of a project manager employed by the Contractor who has expertise in managing Work. All personnel directly involved with the performance of Work shall be trained regarding the use of safety equipment, protective equipment, and respirators (if applicable).
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## **15. RECORDS AND AUDIT RIGHTS**

Contractor shall maintain complete and accurate records of (i) Work; (ii) all activities in completion of its Work; and (iii) the services of any subcontractor. All records shall be maintained in accordance with recognized commercial accounting practices for a period of five (5) years after completion of the Project or termination of Agreement, whichever is later. At any time during the term of this Agreement and for a period of five (5) years thereafter, Customer or a duly authorized audit representative of Customer, at its expense and at reasonable times, reserves the right to audit Contractor's records and books relevant to all services provided under this Agreement. In the event the audit reveals any errors (an error is a math or detail error) or overpayments by Customer, Customer shall provide Contractor written notice of said error along with all evidence found in support of such error. If any error found exceeds five percent (5%) of the amount of said invoice from which the error was found, then Contractor agrees to pay for the cost of said audit. Contractor shall refund the full amount of the overpayments and other charges due or dispute such claim in accordance with the dispute resolution procedure in Agreement within thirty (30) calendar days of the audit findings.

A. The following applies if the Project arises from a presidentially declared disaster, Access to Records:

- 1) The Contractor agrees to provide the State of Louisiana Office of Risk Management, the recipient (Governor's Office of Homeland Security and Emergency Preparedness), the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.
- 2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- 3) The Contractor agrees to provide the FEMA Administrator or his authorized representative's access to construction or other work sites pertaining to the work being completed under the Agreement.

## **16. SEVERABILITY**

If any provision of the Agreement is invalid or unenforceable as against any person or party, the remaining provisions and the applicability of such provision to other provisions or parties shall not be affected thereby, and each remaining provision of Agreement shall, except as otherwise herein provided, be valid and enforceable to the fullest extent permitted by law.

## **17. THIRD PARTY BENEFICIARIES**

This Agreement is entered into solely for the benefit of the parties hereto and shall not confer any rights upon any person or entity not a party to this Agreement.

## **18. CONFIDENTIALITY**

Contractor shall not, except as necessary in the performance of this Agreement or as authorized in writing by the Customer, supply, disclose, or otherwise permit access at any time to any confidential information concerning or in any way related to Customer. Contractor shall not publicize this Agreement or disclose, confirm, or deny any details thereof to third parties, or use any photographs or video recordings of Customer's property, officers, employees, or guests or use Customer's name in connection with any sales promotion or publicity event without the prior written approval of Customer. Further, Contractor and Customer acknowledge that they or their employees may, in the performance of this Agreement, come into possession of proprietary or confidential information owned by or in the possession of the other. Neither party shall use any such information for its own benefit or make such information available to any person, firm, corporation, or other organization, regardless of whether

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directly or indirectly affiliated with Contractor or Customer, unless (a) the disclosure is (i) required by law, (ii) required by order of any court or tribunal or (iii) necessary for the assertion of a right, or defense of an assertion of a right, by one party against the other party hereto, or (b) the information has been acquired from other sources not due to a breach of this Agreement. Provided, however, Customer agrees not to assert any proprietary interest or claim of confidentiality regarding any of the cleaning and restoration procedures developed and used by Contractor in the performance of this Project.

## **19. NEWS OR ADVERTISING**

No news, press or information release in any way relating to Customer, Contractor, this Agreement, Work, or any detail of this Project shall be made by either party to any news media or the general public, or used in any advertising campaign, advertisement, reference list, photograph, or promotional material generated by either party without the express written permission of the other party on an incident by incident basis, except as necessary to obtain payment and/or reimbursement from Customer's insurer on Project.

## **20. SURVIVAL OF PROVISIONS**

Termination of this Agreement for any reason whatsoever shall not affect (i) any provision of Agreement relating to any right or obligation of any party which accrued or is vested prior to such termination and shall be deemed to survive the termination of this Agreement or (ii) any continuing obligation, liability, or responsibility of Contractor which would otherwise survive termination of Agreement, including, without limitation, Contractor's indemnification, warranty, or insurance obligations under Agreement. Unless otherwise specifically limited in this Agreement, the rights and remedies available shall be in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available at law or in equity.

## **21. NON-EXCLUSIVE CONTRACT**

Contractor agrees and acknowledges that this Agreement is a non-exclusive agreement to provide certain services to Customer. Customer may enter into one or more additional agreements with third parties relating to the same or similar services.

## **22. INTELLECTUAL PROPERTY ROYALTIES AND LICENSE FEES**

Contractor shall pay any royalties or license fees owing for intellectual property rights of others used in the services furnished pursuant to Agreement.

## **23. WAIVER**

No provision hereof may be waived except in writing signed by the party to be bound thereby. No such written waiver shall be deemed a continuing waiver unless specifically stated therein, and each such waiver shall operate only as to the specific term or condition waived and shall not constitute a waiver of such provision.

## **24. TIME IS OF THE ESSENCE**

Time is of the essence in the performance of all obligations under this Agreement, including without limitation the performance of all Work. Therefore, prompt completion of the Work is required. Contractor shall meet the commitment to the completion of the Work in accordance with the Critical Path Projection Schedule established upon commencement of this Project. If Contractor is disrupted,

# **SAMPLE PROJECT AGREEMENT REMEDATION AND EMERGENCY SERVICES**

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adversely impacted or delayed at any time in the progress of the Work by changes ordered in the Work, by conduct of Customer or any of its other contractors or agents, fire, unusual delay in transportation, adverse weather conditions, acts of terror, security breaches on the property, unavoidable casualties, or any natural or other cause beyond Contractor's control, or by any cause that the Customer determines may justify the delay, then for each delay and the time for Contractor to complete its Work shall be extended for a reasonable time, but in no event less than the cumulative periods of the disruptions, impacts and delays.

## **25. FAILURE TO RESPOND**

Should "CONTRACTOR" fail to respond in a timely manner upon notification, "CUSTOMER" will be entitled to the difference in price and any down time, caused by that substitution.

## **26. GIFTS AND GRATUITIES AND CONFLICTS OF INTEREST**

- A. Contractor certifies that, to the best of its knowledge and belief, no economic, beneficial, employment or managerial relationship exists between Contractor and any employee of Customer or its parent, affiliate or subsidiary companies, or between Contractor and any relative of an employee of Customer or any such companies, which would tend in any way to influence such employee in the performance of his or her duties on behalf of Customer or its parent, affiliate or subsidiary company in connection with the awarding, making, amending or making determinations concerning the performance under the Agreement. Contractor agrees to immediately disclose to Customer in writing if Contractor subsequently discovers or identifies any such relationship or conflict.
- B. The exchange or offering of any money, gift item, personal service, entertainment or unusual hospitality by personnel of either party to Agreement to personnel of the other party is expressly prohibited. Any violation of this provision constitutes a material breach of Agreement.

## **27. GOVERNING LAW, VENUE AND FORUM**

This agreement shall be governed by and interpreted in accordance with the laws of the State of Louisiana. Venue of any action brought with regard to the Agreement shall be in the Nineteenth Judicial District Court, parish of East Baton Rouge, State of Louisiana.

## **28. CONTRACT CONTROVERSIES**

Any claim or controversy arising out of this Agreement shall be resolved by provisions of La R.S. 39:1671-1673.

## **29. MULTIPLE COUNTERPARTS AND FACSIMILE**

This Agreement may be executed in separate or multiple counterparts by the parties. All of such counterparts shall be considered as one and the same instrument notwithstanding the fact that various counterparts are signed by only one of the parties, and all of such copies shall be considered as one and the same Agreement. In addition, any true and correct photocopy or facsimile copy of Agreement or Agreement Documents together with any signatures on such documents transmitted by any of the parties shall be deemed to be originals and may be utilized by any party for any purpose whatsoever, including any proceedings relating to this Agreement or Work. Upon request by any party, any counterpart, photocopy or facsimile copy shall be substituted with the actual signed copy or be executed by the parties without effecting the effective date or actual execution dates.

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# SAMPLE PROJECT AGREEMENT REMEDIATION AND EMERGENCY SERVICES

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## 30. CONSTRUCTION

The headings assigned to the sections of Agreement are solely for the convenience of the parties and shall not limit the scope or be considered to interpret this Agreement. The terms set forth in the Project Agreement shall control over any conflicts between its terms and the terms of any other Agreement Document, except as specifically stated otherwise. The terms of this Agreement shall be interpreted consistently without regard to which party may have drafted its terms and without regard to any such presumptions.

## 31. ENTIRE AGREEMENT

This Agreement with the following attachments, and the ITB with its attachments, exhibits, and the awarded contract (collectively referenced as "Agreement Documents") comprise the complete and entire understanding and agreement of the parties as to the services to be performed on the Project. No modification, alteration or waiver of this Agreement or any provision hereof shall be effective unless in writing and signed by both parties hereto.

This Agreement includes the following documents: *(check as applicable)*

- ☐ This Project Agreement
- ☐ Conditions to Rate Schedules
- ☐ Xactimate Estimate
- ☐ Scope of Work
- ☐ Price Limitation Agreement
- ☐ Critical Path Projection Schedule
- ☐ Multiple Building Form
- ☐ Other(s), specify \_\_\_\_\_
- ☐ Other(s), specify \_\_\_\_\_

By execution of this Agreement, Contractor and Customer each accept and agree to the terms and conditions of the Agreement and all Agreement Documents, effective as of \_\_\_\_\_

Day, Month, Year

**SIGNATURE PAGE FOLLOWS**

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**SAMPLE  
PROJECT AGREEMENT  
REMEDIATION AND EMERGENCY SERVICES**

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**SIGNATURE PAGE** for

Contract #: \_\_\_\_\_

Project Name: \_\_\_\_\_

**CONTRACTOR**

COMPANY NAME: \_\_\_\_\_

**COMPANY REPRESENTATIVE:**

PRINT NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

**THE STATE OF LOUISIANA**

AGENCY NAME: \_\_\_\_\_

**AGENCY REPRESENTATIVE:**

PRINT NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

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**Exhibit 8 / Attachment Conditions to Rate Schedules**

**CONDITIONS TO RATE SCHEDULES  
ADDITIONAL SPECIAL TERMS & CONDITIONS**

All pricing by Contractor shall be subject to the following additional special terms and conditions, as well as, the terms and conditions in the awarded ITB and Project Agreement (Agreement Documents). Any terms set forth in these conditions shall control over any inconsistent terms in Contractor's Labor, Materials, and Equipment Rate Schedule ("Rate Schedule") agreed upon in the Agreement.

**1. Labor – Rate Schedule**

- a. Amounts due are computed by multiplying the **actual** and appropriate hourly rate, or rates, set forth in the Rate Schedule by the number of direct labor hours performed. The Contractor will substantiate invoices for labor by individual daily job time cards, or such other substantiation as requested by the State.
- b. After hour rates and other premium rates are not allowed. The awarded ITB and contract encompasses services that are available twenty-four (24) hours a day, seven (7) days a week.
- c. Neither Contractor nor any subcontractor shall charge overtime labor rates for any personnel without preapproval and the consent of the State. Overtime labor charges, if approved, are based on actual, direct labor hours performed for this Agreement.
- d. Rates for approved overtime will not exceed fifty percent [50%] (time and one-half) of the negotiated labor rate per individual.
- e. Notwithstanding the rates set forth on the Rate Schedule, labor rates must fall within the parameters of the local industry standards and then current price indexes.
- f. Contracted labor (temporary labor) shall be invoiced based on the Rate Schedule submitted under the awarded ITB. Daily, individual time sheets must be submitted for payment.
- g. Unless provisions of the Rate Schedule hereof otherwise specify, the hourly rate or rates set forth in the Rate Schedule shall not be varied by virtue of the Contractor having performed work on an overtime basis. The rate adjustment for overtime will be reimbursable only to the extent the overtime is approved by the State.
- h. Work shall be billed based on the proper labor rate category for the work being performed. The labor rate shall not be increased by the virtue of a higher qualified or rated employee performing a lower rated category.
- i. The payable rate for travel time authorized by the State shall be one-half the Standard Hours scheduled rates set forth in the Rate Schedule. Billable travel time by any individual is limited to ten (10) hours per individual per trip. Travel time is not to be used in whole or in part for the computation of overtime, should overtime be allowed for this Agreement.

2. Labor – Unit Cost Pricing (Xactimate)

- a. When specific labor Unit Cost Pricing (Xactimate) entries are used, the amounts due are computed by multiplying the **actual** number of direct labor hours performed by the appropriate job classification selection in Xactimate. The Contractor will substantiate labor charges by individual daily job time cards, or such other substantiation as requested by the State.
- b. Labor only entries on an Xactimate estimate should be very limited, as the Xactimate entries for activities being performed include labor, material, and equipment considerations.
  - i. All labor only entries must be substantiated by daily, individual time cards
  - ii. The State reserves the right to request other substantiation, if needed or warranted
- c. Premium rates and after hour rates are not allowed. The ITB encompasses services that are available twenty-four (24) hours a day, seven (7) days a week.
- d. Neither Contractor nor any subcontractor shall charge overtime labor rates for any personnel without preapproval and the consent of the State. Overtime labor charges, if approved, are based on actual, direct labor hours performed for this Agreement.
- e. The hourly rate or rates set forth in the Unit Cost Pricing (Xactimate) shall not be varied by virtue of the Contractor having performed work on an overtime basis. The portion of any rate specified as overtime will be reimbursable only to the extent the overtime is approved by the State.
- f. The payable rate for travel time authorized by the State shall be one-half the Standard Hours scheduled rates set forth in the Schedule. Billable travel time by any individual is limited to ten (10) hours per individual per trip. Travel time is not to be used in whole or in part for the computation of overtime, should overtime be allowed for this Agreement.

3. Materials, Equipment and Reimbursable

- a. Material Rate Schedules - Contractor shall support all material costs claimed for those items listed on the Rate Schedule. **Direct Materials**, as referenced by this clause, are defined as those materials, which are on site and consumed during the course of the completion of the Scope of Work and are substantiated by Daily Materials Usage Reports submitted and verified on a daily basis. The costs for any Material not listed on the Material Rate Schedule are reimbursable provided that the Material costs fall within the parameters of the industry standard price index. Contractor shall be reimbursed for items and services purchased directly for the purpose of completing the Scope of Work for items not listed within the Rate Schedule only when cash, checks, or other forms of actual payment have been made for such purchased items or services and documentation for actual payment made is provided.
  - b. Rate Schedules and Unit Cost (Xactimate) Pricing - The actual cost of subcontracts which are authorized pursuant to this Agreement shall be reimbursable costs hereunder, provided such costs are consistent with parameters of the industry standards price index. The rate(s) for any subcontractor services, materials or equipment must be submitted for approval by the State and/or its designee prior to engaging the services of such subcontractor and invoicing for such costs. Subcontractor Services and/or subcontracted rates for services, materials and equipment must fall within the parameters of the industry standard price index.
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- c. Contractor shall, to the extent of his ability, procure materials and/or services at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials, and take all cash and trade discounts, rebates, allowances, credits, salvage options, commissions, and other benefits. Contractor further agrees that it shall not accept any discounts, refunds, rebates, credits or other gratuities involved with the procurement of such materials and/or services which are not fully disclosed to the State prior to the purchase/procurement of such materials or services.
- d. Unit Cost (Xactimate) Pricing – Duplicative entries for activities and/or overlapping entries are not allowed. It is the Contractor's responsibility to have the knowledge and understanding of the components that are utilized in the make-up of the unit cost for an Xactimate entry. Failure to use the proper entries or to enter overlapping/duplicative entries will result in removal of the items or request for corrections by the State and/or its designee.
- e. Rate Schedules Pricing - Any unit, hourly, piece, rate, or other charge not provided on the Rate Schedules but required and approved by the State for the Work must fall within the industry standard or price indexes or be modified to meet the industry standard price index.
- f. Rate Schedules and Unit Cost (Xactimate) Pricing - If there are travel expenses warranted on a Project **AND** pre-approved by the State, those expenses may not exceed the allowable amount per the State Travel Policy Guidelines, as shown in the Travel Guide– Pocketsize (ensure the Travel Guide being used encompasses the dates the travel took place). Receipts are required unless otherwise instructed by the State, in writing. The Travel Guide - Pocketsize can be found on the State of Louisiana DOA website at <https://www.doa.la.gov/Pages/osp/Travel/travelPolicy.aspx>.
  - i. Travel and other reimbursable expense shall constitute part of the total maximum payable under the contract. Travel expenses shall be reimbursed in accordance with Administration Policy and Procedure Memorandum 49 (PPM 49), LAC 4, Part V.

**Exhibit 8 / Attachment Xactimate Estimate**

**XACTIMATE ESTIMATE / SCOPE**

Provided by Contractor on Projects \$50,000 and under

**Exhibit 8 / Attachment Scope of Work**

**SCOPE OF WORK**

Provided by Contractor for each Project over \$50,000

**Exhibit 8 / Attachment Price Limitation**

**PRICE LIMITATION AGREEMENT**

**Project Name:** \_\_\_\_\_

It is accepted that the total cost for the performance of Work shall not exceed the stated Not to Exceed Price set forth in this Attachment. If at any time during the performance of Work, Contractor has reason to modify or change the Work, and this modification or change has an impact on the Not to Exceed Price stated in this Attachment, Contractor shall notify The State and/or its designee, giving his revised estimate with supporting reasons and documentation. The State and/or its designee shall not be obligated to pay the Contractor any amount in excess of the Not to Exceed Price set forth in this Attachment, unless and until the Work and Not to Exceed Price have been modified by written Change Order executed by both parties.

Not to Exceed Price: \$\_\_\_\_\_

AGREED TO BY:

\_\_\_\_\_  
Contractor Signature

\_\_\_\_\_  
Customer/Designee Signature

\_\_\_\_\_  
Contractor Printed Name

\_\_\_\_\_  
Customer/Designee Printed Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**Exhibit 8 / Attachment Critical Path Projection Schedule**

**CRITICAL PATH PROJECTION SCHEDULE**

Submitted by Contractor for Project, as agreed upon by Customer

[illegible]

**Exhibit 8 / Attachment Anti-Lobbying Compliance Certificate**

**ANTI-LOBBYING COMPLIANCE CERTIFICATE**

In accordance with the Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended), "Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient."

**APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING**  
**Certifications for Contracts, Grants, Loans, and Cooperative Agreements**

The undersigned Contractor certifies, to the best of his or her knowledge, that:

- 1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- 2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- 3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, named below, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.

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Name and Address of Organization (Vendor/Contractor)

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Print Name and Title of Authorized, Submitting Official     /     Signature     /     Date

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